Editor's note: Appealed – aff'd, Civ.No. C-79-077 (D.Wyo. Jan. 31, 1980)

CHAPARRAL RESOURCES, INC.

IBLA 79-67 Decided February 15, 1979

Appeal from decision of the Wyoming State Office, Bureau of Land Management, holding oil and gas lease WY-0325480 to have expired as of midnight June 30, 1978.

Affirmed.

1. Oil and Gas Leases: Production--Oil and Gas Leases: Royalties--Oil and Gas Leases: Termination

   An oil and gas lease issued for a primary term of 10 years and extended for 2 years by drilling cannot be extended further by payment of compensatory royalty where there is no showing that the leasehold is suffering drainage from an adjoining tract, and no compensatory royalty has been assessed by the district supervisor under 30 CFR 221.21(c).

APPEARANCES: James R. Learned, Esq., Cheyenne, Wyoming, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Chaparral Resources, Inc., appeals from a decision of the Wyoming State Office, Bureau of Land Management (BLM), holding its oil and gas lease WY-0325480 to have expired as of midnight, June 30, 1978. Appellant's lease, which was issued for a 10-year primary term beginning July 1, 1966, was extended through June 30, 1978, under the provision of 43 CFR 3107.2-3. By decision of October 12, 1978, BLM held the lease to be ineligible for further extension, there being no production on the leasehold.

The lands embraced by the subject lease are as follows:

TOWNSHIP 37 NORTH, RANGE 74 WEST, 6th P.M.
Section 19: NE/4 NW/4;
Section 20: SW/4;
Section 29: N/2 NW/4;

Section 30: Lot 1; N/2 SE/4; SW/4 SE/4;
Section 31: Lots 1, 2, 3;
Section 32: SW/4;
Containing 718.23 acres, more or less.

Appellant conducted drilling operations on the lease only in section 30 and the well which it completed in section 30 was found to be unproductive. Appellant, however, states that it presently holds the working interest in a well in section 19 which has been successfully completed as a producer and shut in. This well, located on lands adjoining those held by appellant under lease WY-0325480, was shut in due to appellant's difficulties in procuring a pipeline connection for the collection of natural gas produced by the well. Absent such pipeline connection, appellant alleges, the well cannot be produced due to State restrictions against the flaring of natural gas.

Although this shut-in well is not situated on the lease tract here at issue, appellant argues that the completion of this well, viewed in combination with several other facts, should result in the continuation of its interest in the WY-0325480 lease. As noted above, the leased lands include the NE 1/4 NW 1/4 of section 19. By order of the Wyoming Oil and Gas Conservation Commission dated April 22, 1977, section 19 has been designated as a drilling unit for the production of hydrocarbons from the Frontier formation, a producing horizon which underlies lands in section 19 and elsewhere. Appellant's shut-in well, located in the NW 1/4 NW 1/4 of section 19, has been tested and proven as a producer from the Frontier formation and, according to appellant, is suffering drainage from various wells in the field outside section 19.

Appellant points out that the United States Geological Survey (USGS) has advised Federal lessees in section 19 to join other interest holders in the section 19 drilling unit in an approved communitzation agreement. A USGS letter to such Federal lessees further advised that:

> If an agreement is not submitted for approval, compensatory royalty will be assessed in the amount of the royalty rate for each lease times the ratio of the acreage of each lease within the spacing unit to the total acreage within times the total acreage within the spacing unit times the total value of the production from the spacing unit well, on a monthly basis, effective the first of the month during which first production is established.

At the time of the decision below, no approved communitization agreement had been reached, no compensatory royalty had been assessed or paid, and no production had been obtained from appellant's well.

[1] On appeal appellant argues that all leases in section 19 should be classified as producible, beginning on the date that the

well in NW 1/4 NW 1/4 of section 19 was completed to the Frontier formation. This result, according to appellant, necessarily follows from the fact that "all leases within the drilling and spacing unit * * * are entitled to participation in all production from the authorized well within that unit either on the basis of an approved communitization agreement or by the assessment of compensatory royalty." The answer to this argument is simple enough: there is no approved communitization agreement and, since there has been no production from appellant's well, no compensatory royalty can be assessed. As we held in the case of Webb Resources, Inc., 38 IBLA 330 (1978), payment of compensatory royalty will not extend a lease where there has been no formal estimation of drainage made by the appropriate supervisor. See 30 CFR 221.21(c). Furthermore, as noted in Webb, a shut-in well cannot give rise to any obligation to pay compensatory royalty.

Appellant argues further that its failure to produce the well in the NW 1/4 NW 1/4 of section 19 is not due to any lack of diligence, but is the result of unavoidable administrative delays and burdensome governmental regulations. Assuming, arguendo, the correctness of these allegations, we find that, absent an approved communitization agreement, appellant's diligence in developing lands other than those covered by the subject lease is utterly irrelevant to the question of its right to a renewal of that lease.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Frederick Fishman
Administrative Judge

We concur:

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Edward W. Stuebing
Administrative Judge

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Douglas E. Henriques
Administrative Judge